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Attorneys for Plaintiff
AJ TEK CORPORATION

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

AJ TEK CORPORATION,

Plaintiff,

v.

JOHN VOSTRO,

Defendant.

Case No.: 3:18-cv-7010

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT**

JURY TRIAL DEMANDED

Plaintiff AJ Tek Corporation (“AJ Tek” or “Plaintiff”), for its Complaint against Defendant John Vostro (“Defendant”), by and through its undersigned counsel alleges as follows:

INTRODUCTION

1
2 1. AJ Tek is the author and owner of all rights in its WSUS Automated Maintenance
3 Software scripts (all versions). AJ Tek seeks injunctive relief and damages arising from
4 Defendant's use and distribution of its WSUS Automated Maintenance Software scripts on at
5 least Internet property GitHub.com, which infringes its copyrights.

PARTIES

6
7 2. AJ Tek is a Canadian corporation, incorporated under the laws of the Province of
8 Ontario, with its principal place of business at 2120 Pelee Blvd., Oakville, Ontario L6H 4C7.

9 3. On information and belief, Defendant John Vostro is an individual who resides in
10 Sanremo, Italy.

JURISDICTION

11
12 4. This Court has subject matter jurisdiction over the federal claims asserted herein
13 pursuant to 28 U.S.C. §§ 1331 and 1338 because this action alleges violations of the Copyright
14 Act (17 U.S.C. § 101, et seq.).

15 5. This Court has personal jurisdiction over Defendant because he consented to
16 jurisdiction in this judicial district by filing a counter notification pursuant to 17 U.S.C. § 512,
17 the Digital Millennium Copyright Act ("DMCA").

18 6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a
19 substantial part of the events or omissions giving rise to this action occurred in this District and
20 because Defendant consented to jurisdiction in this judicial district. Alternatively, venue is
21 proper in this District pursuant to 28 U.S.C. § 1391(b)(3) because Defendant does not reside in
22 the United States and consented to jurisdiction in only this judicial district and, therefore, there is
23 no district in which an action may otherwise be brought. Finally, venue is proper in this judicial
24 district under 28 U.S.C. § 1400(a) as Defendant stipulated that he may be found in this district.

INTRADISTRICT ASSIGNMENT

25
26 7. Intradistrict assignment to the San Francisco Division is appropriate under Civil
27 Local Rule 3-2(c) as this is an intellectual property action.

GENERAL ALLEGATIONS

8. AJ Tek is the developer and servicer of its WSUS Automated Maintenance Software.

9. AJ Tek is the owner of all copyrights for its WSUS Automated Maintenance Software scripts.

10. AJ Tek's WSUS Automated Maintenance Software scripts are copyrightable subject matter under the laws of the United States and pursuant to the Berne Convention for the Protection of Literary and Artistic Works.

11. The infringed works are foreign works authored in Canada and, therefore, under the Berne Convention are not required to be registered in the United States prior to commencement of an action for copyright infringement.

12. AJ Tek maintains its Internet property, www.ajtek.ca, where an annual license for use of its WSUS Automated Maintenance Software can be purchased.

13. AJ Tek's Internet property, www.ajtek.ca, details its minimum licensing requirements and End User License Agreement (EULA) wherein it specifically states, "you may not distribute, publish, resell, or otherwise share the Software or derivative works based on the Software without prior express written consent from AJ Tek Corporation." *See* Exhibit 1.

14. On or before October 2018 Defendant posted infringing content on GitHub.com at <https://github.com/wsus-script/WSUS-Script> containing AJ Tek's WSUS Automated Maintenance Software script version 3.1. *See* Exhibit 2.

15. AJ Tek, owner of the copyrights for the infringed works, has never granted a license to Defendant for any use of the copyrighted works.

16. On October 26, 2018, AJ Tek submitted a proper takedown notification to GitHub asserting that Defendant's content posted at <https://github.com/wsus-script/WSUS-Script> was not authorized as the work was not licensed to Defendant under an open source license. *See* Exhibit 3.

1 17. On or about October 31, 2018, Defendant filed a counter notification with GitHub
2 maintaining his right to use the infringing works, which was served to AJ Tek on November 1,
3 2018. *See* Exhibit 4.

4 18. Defendant consented to jurisdiction in this district where GitHub is located at 88
5 Colin P Kelly Jr St, San Francisco, CA 94107.

6 **FIRST CLAIM FOR RELIEF – COPYRIGHT INFRINGEMENT**

7 **(17 U.S.C. § 501 ET SEQ.)**

8 19. AJ Tek incorporates by reference the allegations in paragraphs 1-18 as if fully set
9 forth herein.

10 20. AJ Tek's WSUS Automated Maintenance Software scripts (all versions) are
11 original works of authorship and copyrightable subject matter under the laws of the United States
12 pursuant to the Berne Convention for the Protection of Literary and Artistic Works.

13 21. AJ Tek owns all right, title, an interest in its works, namely the WSUS Automated
14 Maintenance Software scripts.

15 22. Through and by conduct alleged herein, Defendant has infringed AJ Tek's
16 copyrights in the WSUS Automated Maintenance Software scripts by at least using, reproducing,
17 and distributing AJ Tek's WSUS Automated Maintenance Software scripts, namely version 3.1,
18 without permission.

19 23. Defendant's posted content on GitHub at [https://github.com/wsus-script/WSUS-](https://github.com/wsus-script/WSUS-Script)
20 Script is identical to AJ Tek's WSUS Automated Maintenance Soft script version 3.1.

21 24. As a direct and proximate result of Defendant's infringing acts, AJ Tek is entitled
22 to damages pursuant to 17 U.S.C. § 504(b).

23 25. As a direct and proximate results of Defendant's infringing acts, AJ Tek has and
24 will continue to sustain substantial irreparable injury and harm. As such, Defendant should be
25 enjoined by the Court from his infringing acts and AJ Tek is entitled to preliminary and
26 permanent injunctive relief to restrain and enjoin Defendant's continued infringing conduct.

27 **JURY DEMAND**

28 Plaintiff hereby demands a trial by jury on all issues triable as such.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- A. For a judgement entered in Plaintiff's favor against Defendant on all claims;
- B. For a preliminary and permanent injunction prohibiting Defendant from continuing to infringe Plaintiff's copyrights;
- C. For damages in such amount as may be found by the Court, or otherwise permitted by law;
- D. For Plaintiff's costs and attorneys' fees;
- E. An award to Plaintiff of such further relief at law or in equity as the Court deems just and proper.

Date: November 19, 2018

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